

ARKANSAS SUPREME COURT

No. CR 07-456

CHARLES PRICHARD
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 24, 2007

PRO SE MOTION FOR BELATED
APPEAL OF ORDER AND MOTION
FOR APPOINTMENT OF COUNSEL
[CIRCUIT COURT OF MILLER
COUNTY, CR 2001-189, HON. KIRK
JOHNSON, JUDGE]

MOTION FOR BELATED APPEAL
DENIED; MOTION FOR
APPOINTMENT OF COUNSEL MOOT.

PER CURIAM

In 2004, petitioner Charles Prichard was found guilty of possession of a controlled substance and possession of drug paraphernalia and sentenced to an aggregate term of 480 months' imprisonment. The Arkansas Court of Appeals affirmed. *Prichard v. State*, CACR 04-1296 (Ark. App. June 14, 2006).

Petitioner subsequently timely filed in the trial court a pro se petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. On December 15, 2006, the court entered an order denying the petition. Petitioner did not timely file a notice of appeal with the circuit clerk within thirty days of the date the order was entered as required by Ark. R. App. P.--Civ. 4(a). He now seeks leave from this court to proceed with a belated appeal pursuant to Ark. R. App. P.--Crim. 2(e). He also asks that counsel be appointed to represent him on appeal.

As grounds for the motion, petitioner asserts that the Rule 37.1 petition was meritorious, that he mailed the notice of appeal to the clerk in time for it to reach the clerk before the thirty-day period

elapsed but it was somehow delayed, and that the circuit clerk was entirely to blame for the late filing of the notice of appeal. Petitioner offers no proof that a notice of appeal was received by the circuit clerk within the thirty-day period but not filed.

A petitioner has the right to appeal a ruling on any petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). With that right goes the responsibility to file a timely notice of appeal within thirty days of the date the order was entered. If the petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure, regardless of the merit of the pleading denied by the court. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). Neither the fact that a petitioner is proceeding pro se nor the fact that he or she may be incarcerated constitutes in itself good cause for the failure to conform to the prevailing rules of procedure. *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam).

This court has specifically held that it is not the responsibility of the circuit clerk or anyone other than the petitioner to perfect an appeal. *See Sullivan, supra*. The litigant who claims to have mailed an item has the burden of proving that it reached the circuit clerk by the date it was due to be filed. *See Leavy v. Norris*, 324 Ark. 346, 920 S.W.2d 842 (1996) (per curiam). The bare allegation that a notice of appeal was mailed but not delivered in a timely fashion by the postal service is not in itself good cause to grant a belated appeal. *Skaggs v. State*, 287 Ark. 259, 697 S.W.2d 913 (1985) (per curiam). As petitioner has not established that the clerk received a notice of appeal within thirty days of the date the order was entered but did not file it, and he has stated no good cause for his failure to timely file a notice of appeal, the motion to proceed with a belated appeal is denied. The motion for appointment

of counsel to represent petitioner on appeal is moot.

Motion for belated appeal denied; motion for appointment of counsel moot.